



IN THE

SUPREME COURT of the UNITED STATES

October Term, 1978

No. 78-1909

PHILIP CARCHMAN and MARILYN R. CARCHMAN,
Petitioners,

v.

THE KORMAN CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Third Circuit

PETITIONERS' SUPPLEMENTAL BRIEF

PAUL W. TRESSLER, Esquire
Attorney for Petitioners
392 Souderton-Harleysville Pike
P. O. Box 98
Franconia, Pennsylvania 18924
(215) 723-8991

INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTE INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING WRIT	3
I. The Opinion of the United States District Court for the Eastern District of Pennsylvania Recogn- ized that the Class of Tenants' Association Members Was the Class to Which the Carchmans Claimed Membership	3
II. 42 U.S.C. § 1985 (3) Does Protect Individuals From Private Conspiracies to Deprive Those Individuals of Their Rights of Free Speech, Association and Assembly	5
CONCLUSION	8

TABLE OF CITATIONS

Cases:	Page
Cox v. Louisiana, 379 U.S. 536 (1964)	6
Dickerson v. U.S. Steel Corp. 439 F. Supp. 55 (W.D. Pa. 1977)	6
Great American Federal Savings & Loan Ass'n. v. Novotny, 60 L. Ed. 2d 957 (1979)	5
Griffin v. Breckenridge, 403 U.S. 88 (1971)	5
Jennings v. Shuman, 567 F.2d 1213 (3d Cir. 1977)	7
Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367 (1969) .	6
United States v. Harris, 106 U.S. 629 (1883)	7
Westberry v. Gilman Paper Co., 507 F. 2d 206 (5th Cir. 1975)	6

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment I	5, 6, 7
United States Constitution, Amendment XIV	6, 7

STATUTES

28 U.S.C. § 1254	2
42 U.S.C. § 1985 (3)	2, 5, 6, 7

IN THE
Supreme Court of the United States

October Term, 1978.

No. 78-1909.

PHILIP CARCHMAN and MARILYN R. CARCHMAN,
Petitioners,

v.

THE KORMAN CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

PETITIONERS' SUPPLEMENTAL BRIEF

Petitioners, Philip Carchman and Marilyn R. Carchman, respectfully request this Court to issue a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on March 13, 1979.

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. A, p.11) is reported at 594 F. 2d 354. The opinion of the District Court (Pet. App. A, p.15) is reported at 456 F. Supp. 730.

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was entered on March 13, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

QUESTIONS PRESENTED

1. Whether tenant members of a tenants' association or tenants' rights advocates living in a large luxury apartment complex constitute a proper class protected under 42 U.S.C. § 1985 (3).

2. Whether 42 U.S.C. § 1985 (3) protects against private conspiracies to deprive individuals of their constitutional guarantees of free speech, association and assembly.

STATUTE INVOLVED

42 U.S.C. § 1985 (3), R.S. § 1980, reads as follows:

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing

or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT OF CASE

In that a statement and counter-statement of the facts of this case have already been presented in the Petition for Writ of Certiorari and Brief in Opposition, Petitioners feel that nothing would be gained by restating the facts herein.

REASONS FOR GRANTING WRIT

I. The Opinion of the United States District Court for the Eastern District of Pennsylvania Recognized That the Class

of Tenants' Association Members was the Class to which the Carchmans Claimed Membership.

One of the Respondent's major arguments opposing the granting a Writ of Certiorari in this matter is the wording of the stipulation agreed to by counsel in Judge Edward Becker's chambers at a judicial conference in June of 1978. At that conference, Judge Becker went over the facts of the case with both counsel for Petitioners and Respondents and proposed the present stipulation in order that a decision on Respondent's motion to dismiss may be reached on the merits. Accordingly, the stipulation was agreed to and drafted by Judge Becker.

At that meeting in June of 1978 and in Judge Becker's subsequent opinion supporting his decision to grant Korman's motion to dismiss, Judge Becker recognized that the class of individuals to which the stipulation applied included members of apartment tenants' associations. In fact, Judge Becker noted that the facts of the case indicated that Carchman was "an active, vocal member of the tenant association at his private apartment complex." Opinion of the District Court (Pet. App. A, p. 31, footnote 10).

At no time was the stipulation which used the term "tenant organizers" deemed to exclude members of tenants' associations in the context in which it was used by the Court of Appeals. In their brief to the Court of Appeals and in oral argument, Petitioners repeatedly stated that it was the class of tenants' association members or tenants' rights advocates to which they belonged. This is the group which Judge Becker grouped under the term "tenant organizers" and that was the accepted meaning by all parties involved in the judicial conference in June of 1978 in Judge Becker's chambers.

It is difficult how Korman can now come forth and claim that the term "tenant organizers" be construed in its narrowest form to exclude members of organized tenants' associations such as the one at Meadowbrook to which the Carchman's belonged. Such a class of individuals, with its formal organization structure, elected officers, and the like should constitute a proper class under 42 U.S.C. § 1985 (3) and Griffin v. Breckenridge, 403 U.S. 88 (1971).

Accordingly, the Court should grant the Writ of Certiorari and review the Judgment rendered in this matter by the Court of Appeals for the Third Circuit.

II. 42 U.S.C. § 1985 (3) Does Protect Individuals From Private Conspiracies to Deprive Those Individuals of Their Rights of Free Speech, Association and Assembly.

Korman finally asserts that since the Carchman's did not challenge the dismissal of their First Amendment action against Korman alone, it logically follows that their action directed against Korman as a conspirator along with the Meadowbrook Valley Partnership, owners of the apartment complex in which the Carchmans were living, brought under section 1985 (3) must also necessarily fail.

Petitioners agree with the statement that section 1985 (3) does not in and of itself create substantive constitutional or civil rights but rather is basically implementing legislation designed to provide a remedy for violations of the rights which are already guaranteed by the United States Constitution or by federal statutes. Great American Federal Savings & Loan Ass'n. v. Novotny, 60 L. Ed. 2d 957 (1979).

Still, 42 U.S.C. § 1985 (3) does address itself to wholly private conspiracies directed to members of protected classes

the object of such conspiracies is to deprive those persons of rights guaranteed against infringement. Such acts by purely private persons would not be actionable without 42 U.S.C. § 1985 (3) in that the First and Fourteenth Amendment only acts in protecting individuals from governmental action, either federal or state. However, the Congress recognized that individuals of easily recognized classes could also have those protected rights deprived by the actions of a group of private citizens who conspire towards such an end. The Fourteenth Amendment and 42 U.S.C. § 1985 (3) operate in tandem to private a cause of action against purely private parties, Westberry v. Gilman Paper Co., 507 F.2d 206 (5th Cir. 1975), and does not require that the defendants act under colour of state law. Jennings v. Shuman, 567 F.2d 1213 (3d Cir. 1977); Dickerson v. U.S. Steel Corp., 439 F. Supp. 55 (W.D. Pa. 1977).

There can be no doubt that the rights of free speech, association and assembly are federally protected rights and indeed such rights have been termed by this Court to be "fundamental", Cox v. Louisiana, 379 U.S. 536 (1964), and the very "essence of self-government". Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367 (1969). It is difficult to see how Korman can claim that the Carchmans are not asserting federally protected rights when they allege violations of their rights of free speech, association and assembly.

While the Carchmans' guarantees of free speech, association and assembly may not be protected against Korman should Korman act by itself, 42 U.S.C. § 1985 (3) does prohibit such acts when Korman acts with others, here the Meadowbrook Valley Partnership as alleged in Petitioner's Amended Complaint (Brief in Opposition, App. II, p.19). It becomes actionable in that section 1985 (3) reaches private conspiracies to deprive

individuals who are members of recognized classes of their rights and privileges under the Constitution and the laws. Jennings v. Shuman, *supra*.

The fact that section 1985 (3) reaches private conspiracies and that state action is not required to state a cause of action has been implicitly recognized by this Court since the decision in United States v. Harris, 106 U.S. 629 (1883). In Harris, the Court was construing the exact criminal counterpart to 42 U.S.C. § 1985 (3) and the analogy can be drawn to section 1985 (3). In Griffin v. Breckenridge, *supra*, concerning the lack of the need for state action under section 1985 (3), this Court stated:

Indeed, the failure to mention any such requisite can be viewed as an important indication of congressional intent to speak in § 1985 (3) of all deprivation of "equal protection of the laws" and "equal privileges and immunities under the laws," whatever the source. 403 U.S. at 97. (Emphasis in original).

Accordingly, the Carchmans have alleged a violation of their rights under the First and Fourteenth Amendments relating to their freedoms of speech, association and assembly which freedoms are the very touchstone of American Democracy and our way of life. While not protected from infringement by private individuals acting alone, those freedoms have been deemed so precious, along with others, by the Congress that it decided that they deserved protection from private parties acting with others to deprive certain groups or classes of individuals of those very important rights. Such rights must be deemed as federally protected rights as to come under protection of 42 U.S.C. § 1985 (3).

CONCLUSION

For the reasons stated above and in the Petition for Writ of Certiorari, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

PAUL W. TRESSLER, Esquire
392 Souderton-Harleysville Pike
P. O. Box 98
Franconia, Pennsylvania 18924
(215) 723-8991

Attorney for Petitioners,
Philip and Marilyn R. Carchman

Dated: October 3, 1979